

Senate Bill No. 1262

Passed the Senate August 26, 2004

Secretary of the Senate

Passed the Assembly August 25, 2004

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Section 17510.5 of the Business and Professions Code, and to amend Sections 12581, 12582, 12583, 12584, 12585, 12586, 12599, and 12599.1 of, and to add Sections 12599.3, 12599.6, and 12599.7 to, the Government Code, relating to charitable organizations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1262, Sher. Charitable organizations: fundraising.

(1) Under existing law, the Supervision of Trustees and Fundraisers for Charitable Purposes Act governs charitable corporations, trustees, commercial fundraisers, fundraising counsel, and commercial coventurers who hold or solicit property for charitable purposes over which the Attorney General has enforcement and supervisory powers. Under the act, the Attorney General is also required to establish and maintain a register of charitable corporations and trustees subject to the act.

Existing law also requires the solicitor or seller of any solicitation or sales solicitation for charitable purposes to comply with specified disclosure requirements. Existing law also provides that any person, firm, corporation, partnership or association, or any employee or agent thereof who violates these provisions is guilty of a misdemeanor.

The act also requires a commercial fundraiser to register with the Attorney General's Registry of Charitable Trusts, as specified, and to file an annual financial report of funds solicited on behalf of each tax-exempt organization or for each charitable purpose, and requires every charitable corporation and trustee subject to the act to also register and file with the Attorney General specified periodic written reports.

This bill would revise these provisions to require a charitable organization, including a commercial fundraiser, to include specified disclosures in any written or oral solicitation or any other means not involving direct personal contact, as specified, and would provide that a charity may accept contributions only for a charitable purpose that is expressed in the solicitation for contributions and that conforms to the charitable purpose expressed in the articles of incorporation or other governing



instrument of the charitable organization and to apply the contributions only in a manner consistent with that purpose. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.

The bill would also apply the act to unincorporated associations, except as specified, and other legal entities holding property for charitable purposes and would require every charity, subject to the act, to file with the Attorney General within 30 days after the corporation, unincorporated association, or trustee initially receives any property, except as to future interests in a charitable trust. The bill would also require charities that receive or accrue a gross revenue of \$2,000,000 or more, as specified, in any fiscal year, to prepare annual financial statements that are audited by an independent certified public accountant pursuant to standards for auditor independence, to appoint an audit committee, and make its annual audited financial statements available to the public, as specified.

The bill would require a commercial fundraiser who is not registered, to agree to register prior to the commencement of solicitation, and would require a commercial fundraiser, not less than 10 working days prior to the commencement of each solicitation, campaign, event, or service, or not later than commencement of solicitation for solicitations to aid victims of emergency hardship or disasters, to file a notice with the Attorney General's Registry of Charitable Trusts that contains specified information on a form prescribed by the Attorney General, and would prohibit any person from acting as a commercial fundraiser if he or she, or any person employed by the commercial fundraiser, has been convicted of a crime arising from the conduct of a solicitation for a charitable organization or purpose punishable as a misdemeanor or felony. The bill would also prohibit a commercial fundraiser from soliciting in this state on behalf of a charitable organization unless it is registered in this state or is exempt from registration with the Attorney General's Registry of Charitable Trusts.

The bill would also require that contracts for services between a charitable organization and a fundraising counsel be in writing and that a notice on a form prescribed by the Attorney General containing specified information be filed by the fundraising counsel with the Attorney General's Registry of Charitable Trusts



at least 10 working days prior to the performance of the contract and would provide that the contract between a charitable organization and a commercial fundraiser or fundraising counsel contain specified provisions and are subject to cancellation requirements. The bill would also require a fundraising counsel to register with the Attorney General's Registry of Charitable Trusts or, if not registered, to agree to register prior to the commencement of any solicitation, and would require both a commercial fundraiser and fundraising counsel to maintain specified records for 10 years and to make the records available, including copies of their contracts with the charitable organization, for inspection upon demand by the Attorney General.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 17510.5 of the Business and Professions Code is amended to read:

17510.5. (a) The financial records of a soliciting organization shall be maintained on the basis of generally accepted accounting principles as defined by the American Institute of Certified Public Accountants, the Governmental Accounting Standards Board, or the Financial Accounting Standards Board.

(b) The disclosure requirement of paragraph (7) of subdivision (a) of Section 17510.3 shall be based on the same accounting principles used to maintain the soliciting organization's financial records.

SEC. 2. Section 12581 of the Government Code is amended to read:

12581. This article applies to all charitable corporations, unincorporated associations, trustees, and other legal entities holding property for charitable purposes, commercial fundraisers for charitable purposes, fundraising counsel for charitable purposes, and commercial coventurers, over which the state or the Attorney General has enforcement or supervisory powers. The



provisions of this article shall not apply to any committee as defined in Section 82013 which is required to and does file any statement pursuant to the provisions of Article 2 (commencing with Section 84200) of Chapter 4 of Title 9.

SEC. 3. Section 12582 of the Government Code is amended to read:

12582. “Trustee” means (a) any individual, group of individuals, corporation, unincorporated association, or other legal entity holding property in trust pursuant to any charitable trust, (b) any corporation or unincorporated association which has accepted property to be used for a particular charitable purpose as distinguished from the general purposes of the corporation or unincorporated association, and (c) a corporation or unincorporated association formed for the administration of a charitable trust, pursuant to the directions of the settlor or at the instance of the trustee.

SEC. 4. Section 12583 of the Government Code is amended to read:

12583. The filing, registration, and reporting provisions of this article do not apply to the United States, any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or to any of their agencies or governmental subdivisions, to any religious corporation sole or other religious corporation or organization that holds property for religious purposes, or to any officer, director, or trustee thereof who holds property for like purposes, to a cemetery corporation regulated under Chapter 19 (commencing with Section 9600) of Division 3 of the Business and Professions Code, or to any committee as defined in Section 82013 that is required to and does file any statement pursuant to Article 2 (commencing with Section 84200) of Chapter 4 of Title 9, or to a charitable corporation or unincorporated association organized and operated primarily as a religious organization, educational institution, hospital, or a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code.

SEC. 5. Section 12584 of the Government Code is amended to read:

12584. The Attorney General shall establish and maintain a register of charitable corporations, unincorporated associations, and trustees subject to this article and of the particular trust or other



relationship under which they hold property for charitable purposes and, to that end, may conduct whatever investigation is necessary, and shall obtain from public records, court officers, taxing authorities, trustees, and other sources, whatever information, copies of instruments, reports, and records are needed for the establishment and maintenance of the register.

SEC. 6. Section 12585 of the Government Code is amended to read:

12585. Every charitable corporation, unincorporated association, and trustee subject to this article shall file with the Attorney General a copy of the articles of incorporation, or other instrument that governs the operation of the corporation, unincorporated association, or trust, within 30 days after the corporation, unincorporated association, or trustee initially receives property. A trustee is not required to register as long as the charitable interest in a trust is a future interest, but shall do so within 30 days after any charitable interest in a trust becomes a present interest.

SEC. 7. Section 12586 of the Government Code is amended to read:

12586. (a) Except as otherwise provided and except corporate trustees which are subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or to the Comptroller of the Currency of the United States, every charitable corporation, unincorporated association, and trustee subject to this article shall, in addition to filing copies of the instruments previously required, file with the Attorney General periodic written reports, under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the corporation, unincorporated association, or trustee, in accordance with rules and regulations of the Attorney General.

(b) The Attorney General shall make rules and regulations as to the time for filing reports, the contents thereof, and the manner of executing and filing them. The Attorney General may classify trusts and other relationships concerning property held for a charitable purpose as to purpose, nature of assets, duration of the trust or other relationship, amount of assets, amounts to be devoted to charitable purposes, nature of trustee, or otherwise, and may



establish different rules for the different classes as to time and nature of the reports required to the ends (1) that he or she shall receive reasonably current, periodic reports as to all charitable trusts or other relationships of a similar nature, which will enable him or her to ascertain whether they are being properly administered, and (2) that periodic reports shall not unreasonably add to the expense of the administration of charitable trusts and similar relationships. The Attorney General may suspend the filing of reports as to a particular charitable trust or relationship for a reasonable, specifically designated time upon written application of the trustee filed with the Attorney General and after the Attorney General has filed in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that periodic reports are not required for proper supervision by his or her office.

(c) A copy of an account filed by the trustee in any court having jurisdiction of the trust or other relationship, if the account substantially complies with the rules and regulations of the Attorney General, may be filed as a report required by this section.

(d) The first periodic written report, unless the filing thereof is suspended as herein provided, shall be filed not later than four months and 15 days following the close of the first calendar or fiscal year in which property is initially received. If any part of the income or principal of a trust previously established is authorized or required to be applied to a charitable purpose at the time this article takes effect, the first report shall be filed at the close of the calendar or fiscal year in which it was registered with the Attorney General or not later than four months and 15 days following the close of the calendar or fiscal period.

(e) Every charitable corporation, unincorporated association, and trustee required to file reports with the Attorney General pursuant to this section that receives or accrues in any fiscal year gross revenue of two million dollars (\$2,000,000) or more, exclusive of grants from, and contracts for services with, governmental entities for which the governmental entity requires an accounting of the funds received, shall do the following:

(1) Prepare annual financial statements using generally accepted accounting principles that are audited by an independent certified public accountant in conformity with generally accepted auditing standards. For any nonaudit services performed by the



firm conducting the audit, the firm and its individual auditors shall adhere to the standards for auditor independence set forth in the latest revision of the Government Auditing Standards, issued by the Comptroller General of the United States (the Yellow Book). The Attorney General may, by regulation, prescribe standards for auditor independence in the performance of nonaudit services, including standards different from those set forth in the Yellow Book. If a charitable corporation or unincorporated association that is required to prepare an annual financial statement pursuant to this subdivision is under the control of another organization, the controlling organization may prepare a consolidated financial statement. The audited financial statements shall be available for inspection by the Attorney General and by members of the public no later than nine months after the close of the fiscal year to which the statements relate. A charity shall make its annual audited financial statements available to the public in the same manner that is prescribed for IRS Form 990 by the latest revision of Section 6104(d) of the Internal Revenue Code and associated regulations.

(2) If it is a corporation, have an audit committee appointed by the board of directors. The audit committee may include persons who are not members of the board of directors, but the member or members of the audit committee shall not include any members of the staff, including the president or chief executive officer and the treasurer or chief financial officer. If the corporation has a finance committee, it must be separate from the audit committee. Members of the finance committee may serve on the audit committee; however, the chairperson of the audit committee may not be a member of the finance committee and members of the finance committee shall constitute less than one-half of the membership of the audit committee. Members of the audit committee shall not receive any compensation from the corporation in excess of the compensation, if any, received by members of the board of directors for service on the board and shall not have a material financial interest in any entity doing business with the corporation. Subject to the supervision of the board of directors, the audit committee shall be responsible for recommending to the board of directors the retention and termination of the independent auditor and may negotiate the independent auditor's compensation, on behalf of the board of directors. The audit committee shall confer with the auditor to



satisfy its members that the financial affairs of the corporation are in order, shall review and determine whether to accept the audit, shall assure that any nonaudit services performed by the auditing firm conform with standards for auditor independence referred to in paragraph (1), and shall approve performance of nonaudit services by the auditing firm. If the charitable corporation that is required to have an audit committee pursuant to this subdivision is under the control of another corporation, the audit committee may be part of the board of directors of the controlling corporation.

(f) If, independent of the audit requirement set forth in paragraph (1) of subdivision (e), a charitable corporation, unincorporated association, or trustee required to file reports with the Attorney General pursuant to this section prepares financial statements that are audited by a certified public accountant, the audited financial statements shall be available for inspection by the Attorney General and shall be made available to members of the public in conformity with paragraph (1) of subdivision (e).

(g) The board of directors of a charitable corporation or unincorporated association, or an authorized committee of the board, and the trustee or trustees of a charitable trust shall review and approve the compensation, including benefits, of the president or chief executive officer and the treasurer or chief financial officer to assure that it is just and reasonable. This review and approval shall occur initially upon the hiring of the officer, whenever the term of employment, if any, of the officer is renewed or extended, and whenever the officer's compensation is modified. Separate review and approval shall not be required if a modification of compensation extends to substantially all employees. If a charitable corporation is affiliated with other charitable corporations, the requirements of this section shall be satisfied if review and approval is obtained from the board, or an authorized committee of the board, of the charitable corporation that makes retention and compensation decisions regarding a particular individual.

SEC. 8. Section 12599 of the Government Code is amended to read:

12599. (a) "Commercial fundraiser for charitable purposes" is defined as any individual, corporation, unincorporated association, or other legal entity who for compensation does any of the following:



(1) Solicits funds, assets, or property in this state for charitable purposes.

(2) As a result of a solicitation of funds, assets, or property in this state for charitable purposes, receives or controls the funds, assets, or property solicited for charitable purposes.

(3) Employs, procures, or engages any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes.

A commercial fundraiser for charitable purposes shall include any person, association of persons, corporation, or other entity that obtains a majority of its inventory for sale by the purchase, receipt, or control for resale to the general public, of salvageable personal property solicited by an organization qualified to solicit donations pursuant to Section 148.3 of the Welfare and Institutions Code.

A commercial fundraiser for charitable purposes shall not include a “trustee” as defined in Section 12582 or 12583, a “charitable corporation” as defined in Section 12582.1, or any employee thereof. A commercial fundraiser for charitable purposes shall not include an individual who is employed by or under the control of a commercial fundraiser for charitable purposes registered with the Attorney General. A commercial fundraiser for charitable purposes shall not include any federally insured financial institution which holds as a depository funds received as a result of a solicitation for charitable purposes.

As used in this section, “charitable purposes” includes any solicitation in which the name of any organization of law enforcement personnel, firefighters, or other persons who protect the public safety is used or referred to as an inducement for transferring any funds, assets, or property, unless the only expressed or implied purpose of the solicitation is for the sole benefit of the actual active membership of the organization.

(b) A commercial fundraiser for charitable purposes shall, prior to soliciting any funds, assets, or property, including salvageable personal property, in California for charitable purposes, or prior to receiving and controlling any funds, assets, or property, including salvageable personal property, as a result of a solicitation in this state for charitable purposes, register with the Attorney General’s Registry of Charitable Trusts on a registration form provided by the Attorney General. Renewals of registration shall be filed with the Registry of Charitable Trusts by January 15



of each calendar year in which the commercial fundraiser for charitable purposes does business and shall be effective for one year. A registration or renewal fee of two hundred dollars (\$200) shall be required for registration of a commercial fundraiser for charitable purposes, and shall be payable by certified or cashier's check to the Attorney General's Registry of Charitable Trusts at the time of registration or renewal. The Attorney General may adjust the annual registration or renewal fee as needed pursuant to this section. The Attorney General's Registry of Charitable Trusts may grant extensions of time to file annual registration as required, pursuant to subdivision (b) of Section 12586.

(c) A commercial fundraiser for charitable purposes shall file with the Attorney General's Registry of Charitable Trusts an annual financial report on a form provided by the Attorney General, accounting for all funds collected pursuant to any solicitation for charitable purposes during the preceding calendar year. The annual financial report shall be filed with the Attorney General's Registry of Charitable Trusts no later than 30 days after the close of the preceding calendar year.

(d) The contents of the forms for annual registration and annual financial reporting by commercial fundraisers for charitable purposes shall be established by the Attorney General in a manner consistent with the procedures set forth in subdivisions (a) and (b) of Section 12586. The annual financial report shall require a detailed, itemized accounting of funds, assets, or property, solicited for charitable purposes on behalf of each charitable organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code or for each charitable purpose during the accounting period, and shall include, among other data, the following information for funds, assets, or property, solicited by the commercial fundraiser for charitable purposes:

- (1) Total revenue.
- (2) The fee or commission charged by the commercial fundraiser for charitable purposes.
- (3) Salaries paid by the commercial fundraiser for charitable purposes to its officers and employees.
- (4) Fundraising expenses.
- (5) Distributions to the identified charitable organization or purpose.



(6) The names and addresses of any director, officer, or employee of the commercial fundraiser for charitable purposes who is a director, officer, or employee of any charitable organization listed in the annual financial report.

(e) A commercial fundraiser for charitable purposes that obtains a majority of its inventory for sale by the purchase, receipt, or control for resale to the general public, of salvageable personal property solicited by an organization qualified to solicit donations pursuant to Section 148.3 of the Welfare and Institutions Code shall file with the Attorney General's Registry of Charitable Trusts, and not with the sheriff of any county, an annual financial report on a form provided by the Attorney General that is separate and distinct from forms filed by other commercial fundraisers for charitable purposes pursuant to subdivisions (c) and (d).

(f) It shall be unlawful for any commercial fundraiser for charitable purposes to solicit funds in this state for charitable purposes unless the commercial fundraiser for charitable purposes has complied with the registration or annual renewal and financial reporting requirements of this article. Failure to comply with these registration or annual renewal and financial reporting requirements shall be grounds for injunction against solicitation in this state for charitable purposes and other civil remedies provided by law.

(g) A commercial fundraiser for charitable purposes is a constructive trustee for charitable purposes as to all funds collected pursuant to solicitation for charitable purposes and shall account to the Attorney General for all funds. A commercial fundraiser for charitable purposes is subject to the Attorney General's supervision and enforcement over charitable funds and assets to the same extent as a trustee for charitable purposes under this article.

(h) Not less than 10 working days prior to the commencement of each solicitation campaign, event, or service, or not later than commencement of solicitation for solicitations to aid victims of emergency hardship or disasters, a commercial fundraiser for charitable purposes shall file with the Attorney General's Registry of Charitable Trusts a notice on a form prescribed by the Attorney General that sets forth all of the following:

(1) The name, address, and telephone number of the commercial fundraiser for charitable purposes.



(2) The name, address, and telephone number of the charitable organization with whom the commercial fundraiser has contracted.

(3) The fundraising methods to be used.

(4) The projected dates when performance under the contract will commence and terminate.

(5) The name, address, and telephone number of the person responsible for directing and supervising the work of the commercial fundraiser under the contract.

(i) There shall be a written contract between a commercial fundraiser for charitable purposes and a charitable organization for each solicitation campaign, event, or service, that shall be signed by the authorized contracting officer for the commercial fundraiser and by an official of the charitable organization who is authorized to sign by the organization's governing body. The contract shall be available for inspection by the Attorney General and shall contain all of the following provisions:

(1) The legal name and address of the charitable organization as registered with the Registry of Charitable Trusts unless the charitable organization is exempt from registration.

(2) A statement of the charitable purpose for which the solicitation campaign, event, or service is being conducted.

(3) A statement of the respective obligations of the commercial fundraiser and the charitable organization.

(4) If the commercial fundraiser is to be paid a fixed fee, a statement of the fee to be paid to the commercial fundraiser and a good faith estimate of what percentage the fee will constitute of the total contributions received. The contract shall clearly disclose the assumptions upon which the estimate is based, and the stated assumptions shall be based upon all of the relevant facts known to the commercial fundraiser regarding the solicitation to be conducted by the commercial fundraiser.

(5) If a percentage fee is to be paid to the commercial fundraiser, a statement of the percentage of the total contributions received that will be remitted to or retained by the charitable organization, or, if the solicitation involves the sale of goods or services or the sale of admissions to a fundraising event, the percentage of the purchase price that will be remitted to the charitable organization. The stated percentage shall be calculated by subtracting from contributions received and sales receipts not



only the commercial fundraiser's fee, but also any additional amounts that the charitable organization is obligated to pay as fundraising costs.

(6) The effective and termination dates of the contract and the date solicitation activity is to commence within the state.

(7) A provision that requires that each contribution in the control or custody of the commercial fundraiser shall in its entirety and within five working days of its receipt comply with either of the following:

(A) Be deposited in an account at a bank or other federally insured financial institution that is solely in the name of the charitable organization and over which the charitable organization has sole control of withdrawals.

(B) Be delivered to the charitable organization in person, by United States express mail, or by another method of delivery providing for overnight delivery.

(8) A statement that the charitable organization exercises control and approval over the content and frequency of any solicitation.

(9) If the commercial fundraiser proposes to make any payment in cash or in kind to any person or legal entity to secure any person's attendance at, or sponsorship, approval, or endorsement of, a charity fundraising event, the maximum dollar amount of those payments shall be set forth in the contract. "Charity fundraising event" means any gathering of persons, including, but not limited to, a party, banquet, concert, or show, that is held for the purpose or claimed purpose of raising funds for any charitable purpose or organization.

(10) A provision that the charitable organization has the right to cancel the contract without cost, penalty, or liability for a period of 10 days following the date on which the contract is executed; that the charitable organization may cancel the contract by serving a written notice of cancellation on the commercial fundraiser; that, if mailed, service shall be by certified mail, return receipt requested, and cancellation shall be deemed effective upon the expiration of five calendar days from the date of mailing; that any funds collected after effective notice that the contract has been canceled shall be deemed to be held in trust for the benefit of the charitable organization without deduction for costs or expenses of



any nature; and that the charitable organization shall be entitled to recover all funds collected after the date of cancellation.

(11) A provision that, following the initial 10-day cancellation period, the charitable organization may terminate the contract by giving 30 days' written notice; that, if mailed, service of the notice shall be by certified mail, return receipt requested, and shall be deemed effective upon the expiration of five calendar days from the date of mailing; and that, in the event of termination under this subdivision, the charitable organization shall be liable for services provided by the commercial fundraiser up to 30 days after the effective service of the notice.

(12) A provision that, following the initial 10-day cancellation period, the charitable organization may terminate the contract at any time upon written notice, without payment or compensation of any kind to the commercial fundraiser, if the commercial fundraiser or its agents, employees, or representatives (A) make any material misrepresentations in the course of solicitations or with respect to the charitable organization, (B) are found by the charitable organization to have been convicted of a crime arising from the conduct of a solicitation for a charitable organization or purpose punishable as a misdemeanor or a felony, or (C) otherwise conduct fundraising activities in a manner that causes or could cause public disparagement of the charitable organization's good name or good will.

(13) Any other information required by the regulations of the Attorney General.

(j) It shall be unlawful for a commercial fundraiser for charitable purposes to not disclose the percentage of total fundraising expenses of the fundraiser upon receiving a written or oral request from a person solicited for a contribution for a charitable purpose. "Percentage of total fundraising expenses," as used in this section, means the ratio of the total expenses of the fundraiser to the total revenue received by the fundraiser for the charitable purpose for which funds are being solicited, as reported on the most recent financial report filed with the Attorney General's Registry of Charitable Trusts. A commercial fundraiser shall disclose this information in writing within five working days from receipt of a request by mail or facsimile. A commercial fundraiser shall orally disclose this information immediately upon a request made in person or in a telephone conversation and shall



follow this response with a written disclosure within five working days. Failure to comply with the requirements of this subdivision shall be grounds for an injunction against solicitation in this state for charitable purposes and other civil remedies provided by law.

(k) If the Attorney General issues a report to the public containing information obtained from registration forms or financial report forms filed by commercial fundraisers for charitable purposes, there shall be a separate section concerning commercial fundraisers for charitable purposes that obtain a majority of their inventory for sale by the purchase, receipt, or control for resale to the general public, of salvageable personal property solicited by an organization qualified to solicit donations pursuant to Section 148.3 of the Welfare and Institutions Code. The report shall include an explanation of the distinctions between these thrift store operations and other types of commercial fundraising.

(l) No person may act as a commercial fundraiser for charitable purposes if that person, any officer or director of that person's business, any person with a controlling interest in the business, or any person the commercial fundraiser employs, engages, or procures to solicit for compensation, has been convicted by a court of any state or the United States of a crime arising from the conduct of a solicitation for a charitable organization or purpose punishable as a misdemeanor or felony.

(m) A commercial fundraiser for charitable purposes shall not solicit in the state on behalf of a charitable organization unless that charitable organization is registered or is exempt from registration with the Attorney General's Registry of Charitable Trusts.

(n) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or application of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

SEC. 9. Section 12599.1 of the Government Code is amended to read:

12599.1. (a) "Fundraising counsel for charitable purposes" is defined as any individual, corporation, unincorporated association, or other legal entity who is described by all of the following:



(1) For compensation plans, manages, advises, counsels, consults, or prepares material for, or with respect to, the solicitation in this state of funds, assets, or property for charitable purposes.

(2) Does not solicit funds, assets, or property for charitable purposes.

(3) Does not receive or control funds, assets, or property solicited for charitable purposes in this state.

(4) Does not employ, procure, or engage any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes.

(b) “Fundraising counsel for charitable purposes” does not include any of the following:

(1) An attorney, investment counselor, or banker who in the conduct of that person’s profession advises a client when actually engaged in the giving of legal, investment, or financial advice.

(2) A trustee as defined in Section 12582 or 12583.

(3) A charitable corporation as defined in Section 12582.1, or any employee thereof.

(4) A person employed by or under the control of a fundraising counsel for charitable purposes, as defined in subdivision (a).

(5) A person, corporation, or other legal entity, engaged as an independent contractor directly by a trustee or a charitable corporation, that prints, reproduces, or distributes written materials prepared by a trustee, a charitable corporation, or any employee thereof, or that performs artistic or graphic services with respect to written materials prepared by a trustee, a charitable corporation, or any employee thereof, provided that the independent contractor does not perform any of the activities described in paragraph (1) of subdivision (a).

(6) A person whose total annual gross compensation for performing any activity described in paragraph (1) of subdivision (a) does not exceed twenty-five thousand dollars (\$25,000).

(c) A fundraising counsel for charitable purposes shall, prior to managing, advising, counseling, consulting, or preparing material for, or with respect to, the solicitation in this state of funds, assets, or property for charitable purposes, register with the Attorney General’s Registry of Charitable Trusts on a registration form provided by the Attorney General. Renewals of registration shall be filed with the Registry of Charitable Trusts by January 15 of



each calendar year in which the fundraising counsel for charitable purposes does business and shall be effective for one year.

A registration or renewal fee of two hundred dollars (\$200) shall be required for registration of a fundraising counsel for charitable purposes, and shall be payable by certified or cashier's check to the Attorney General's Registry of Charitable Trusts at the time of registration and renewal. The Attorney General may adjust the annual registration or renewal fee as needed pursuant to this section. The Attorney General's Registry of Charitable Trusts may grant extensions of time to file annual registration as required, pursuant to subdivision (b) of Section 12586.

(d) A fundraising counsel for charitable purposes shall file annually with the Attorney General's Registry of Charitable Trusts on a form provided by the Attorney General, a report listing each person, corporation, unincorporated association, or other legal entity for whom the fundraising counsel has performed any services described in paragraph (1) of subdivision (a), and a statement certifying that the fundraising counsel had a written contract with each listed person, corporation, unincorporated association, or other legal entity that complied with the requirements of subdivision (f).

(e) Not less than 10 working days prior to the commencement of the performance of any service for a charitable organization by a fundraising counsel for charitable purposes, or not later than commencement of solicitation for solicitations to aid victims of emergency hardship or disasters, the fundraising counsel shall file with the Attorney General's Registry of Charitable Trusts a notice on a form prescribed by the Attorney General that sets forth all of the following:

(1) The name, address, and telephone number of the fundraising counsel for charitable purposes.

(2) The name, address, and telephone number of the charitable organization with whom the fundraising counsel has contracted.

(3) The projected dates when performance under the contract will commence and terminate.

(4) The name, address, and telephone number of the person responsible for directing and supervising the work of the fundraising counsel under the contract.

(f) There shall be a written contract between a fundraising counsel for charitable purposes and a charitable organization for



each service to be performed by the fundraising counsel for the charitable organization, that shall be signed by the authorized contracting officer for the fundraising counsel and by an official of the charitable organization who is authorized to sign by the organization's governing body. The contract shall be available for inspection by the Attorney General and shall contain all of the following provisions:

(1) The legal name and address of the charitable organization as registered with the Registry of Charitable Trusts unless the charitable organization is exempt from registration.

(2) A statement of the charitable purpose for which the solicitation campaign is being conducted.

(3) A statement of the respective obligations of the fundraising counsel and the charitable organization.

(4) A clear statement of the fees and any other form of compensation, including commissions and property, that will be paid to the fundraising counsel.

(5) The effective and termination dates of the contract and the date services will commence with respect to solicitation in this state of contributions for a charitable organization.

(6) A statement that the fundraising counsel will not at any time solicit funds, assets, or property for charitable purposes, receive or control funds, assets, or property solicited for charitable purposes, or employ, procure, or engage any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes.

(7) A statement that the charitable organization exercises control and approval over the content and frequency of any solicitation.

(8) A provision that the charitable organization has the right to cancel the contract without cost, penalty, or liability for a period of 10 days following the date on which the contract is executed; that the charitable organization may cancel the contract by serving a written notice of cancellation on the fundraising counsel; and that, if mailed, service shall be by certified mail, return receipt requested, and cancellation shall be deemed effective upon the expiration of five calendar days from the date of mailing.

(9) A provision that, following the initial 10-day cancellation period, the charitable organization may terminate the contract by giving 30 days' written notice; that, if mailed, service of the notice



shall be by certified mail, return receipt requested, and shall be deemed effective upon the expiration of five calendar days from the date of mailing; and that, in the event of termination under this subdivision, the charitable organization shall be liable for services provided by the fundraising counsel to the effective date of the termination.

(10) Any other information required by the regulations of the Attorney General.

(g) It shall be unlawful for any fundraising counsel for charitable purposes to manage, advise, counsel, consult, or prepare material for, or with respect to, the solicitation in this state of funds, assets, or property for charitable purposes unless the fundraising counsel for charitable purposes has complied with the registration or annual renewal and financial reporting requirements of this article.

(h) A fundraising counsel for charitable purposes is subject to the Attorney General's supervision and enforcement to the same extent as a trustee for charitable purposes under this article.

(i) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or application of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

SEC. 10. Section 12599.3 is added to the Government Code, to read:

12599.3. (a) A contract between a charitable organization and a commercial fundraiser for charitable purposes or fundraising counsel for charitable purposes shall be voidable by the charitable organization unless the commercial fundraiser or the fundraising counsel is registered with the Attorney General's Registry of Charitable Trusts prior to the commencement of the solicitation.

(b) Whenever a charitable organization contracts with a commercial fundraiser for charitable purposes or fundraising counsel for charitable purposes, the charitable organization shall have the right to cancel the contract without cost, penalty, or liability for a period of 10 days following the date on which the contract is executed. Any provision in the contract that is intended to waive this right of cancellation shall be void and unenforceable.

(c) A charitable organization may cancel a contract pursuant to subdivision (b) by serving a written notice of cancellation on the



fundraising counsel or commercial fundraiser. If mailed, service shall be by certified mail, return receipt requested, and cancellation shall be deemed effective upon the expiration of five calendar days from the date of mailing. The notice shall be sufficient if it indicates that the charitable organization does not intend to be bound by the contract.

(d) Whenever a charitable organization cancels a contract pursuant to this section, it shall mail a duplicate copy of the notice of cancellation to the Attorney General's Registry of Charitable Trusts.

(e) Any funds collected after effective notice that a contract has been canceled shall be deemed to be held in trust for the benefit of the charitable organization without deduction for costs or expenses of any nature. A charitable organization shall be entitled to recover all funds collected after the date of cancellation.

(f) Following the initial 10-day cancellation period, a charitable organization may terminate a contract with a commercial fundraiser for charitable purposes or a fundraising counsel for charitable purposes by giving 30 days' written notice. If mailed, service of the notice shall be by certified mail, return receipt requested, and shall be deemed effective upon the expiration of five calendar days from the date of mailing. In the event of termination under this subdivision, the charitable organization shall be liable for services provided by the commercial fundraiser or fundraising counsel up to 30 days after the effective service of the notice.

(g) Following the initial 10-day cancellation period, a charitable organization may terminate at any time upon written notice a contract with a commercial fundraiser for charitable purposes or a fundraising counsel for charitable purposes, without payment or compensation of any kind to the commercial fundraiser or fundraising counsel, if the commercial fundraiser or the fundraising counsel, or their agents, employees, or representatives (1) make any material misrepresentations in the course of solicitations or with respect to the charitable organization, (2) are found by the charitable organization to have been convicted of a crime arising from the conduct of a solicitation for a charitable organization or purpose that is punishable as a felony or misdemeanor, or (3) otherwise conduct fundraising activities in a manner that causes or could cause public



disparagement of the charitable organization's good name or good will.

SEC. 11. Section 12599.6 is added to the Government Code, to read:

12599.6. (a) Charitable organizations and commercial fundraisers for charitable purposes shall not misrepresent the purpose of the charitable organization or the nature or purpose or beneficiary of a solicitation. A misrepresentation may be accomplished by words or conduct or failure to disclose a material fact.

(b) A charitable organization must establish and exercise control over its fundraising activities conducted for its benefit, including approval of all written contracts and agreements, and must assure that fundraising activities are conducted without coercion.

(c) A charitable organization shall not enter into any contract or agreement with, or employ, any commercial fundraiser for charitable purposes or fundraising counsel for charitable purposes unless that commercial fundraiser or fundraising counsel is registered with the Attorney General's Registry of Charitable Trusts or, if not registered, agrees to register prior to the commencement of any solicitation.

(d) A charitable organization shall not enter into any contract or agreement with, or raise any funds for, any charitable organization required to be registered pursuant to this act unless that charitable organization is registered with the Attorney General's Registry of Charitable Trusts or, if not registered, agrees to register prior to the commencement of the solicitation.

(e) Each contribution in the control or custody of a commercial fundraiser for charitable purposes shall in its entirety and within five working days of receipt (1) be deposited in an account at a bank or other federally insured financial institution that is solely in the name of the charitable organization on whose behalf the contribution was solicited and over which the charitable organization has sole control of withdrawals or, (2) be delivered to the charitable organization in person, by Express Mail, or by another method of delivery providing for overnight delivery.

(f) Regardless of injury, the following acts and practices are prohibited in the planning, conduct, or execution of any solicitation or charitable sales promotion:



(1) Operating in violation of, or failing to comply with, any of the requirements of this act or regulations or orders of the Attorney General, or soliciting contributions after registration with the Attorney General's Registry of Charitable Trusts has expired or has been suspended or revoked.

(2) Using any unfair or deceptive acts or practices or engaging in any fraudulent conduct that creates a likelihood of confusion or misunderstanding.

(3) Using any name, symbol, emblem, statement, or other material stating, suggesting, or implying to a reasonable person that the contribution is to or for the benefit of a particular charitable organization when that is not the fact.

(4) Misrepresenting or misleading anyone in any manner to believe that the person on whose behalf a solicitation or charitable sales promotion is being conducted is a charitable organization or that the proceeds of the solicitation or charitable sales promotion will be used for charitable purposes when that is not the fact.

(5) Misrepresenting or misleading anyone in any manner to believe that any other person sponsors, endorses, or approves a charitable solicitation or charitable sales promotion when that person has not given consent in writing to the use of the person's name for these purposes.

(6) Misrepresenting or misleading anyone in any manner to believe that goods or services have endorsement, sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has endorsement, sponsorship, approval, status, or affiliation that the person does not have.

(7) Using or exploiting the fact of registration with the Attorney General's Registry of Charitable Trusts so as to lead any person to believe that the registration in any manner constitutes an endorsement or approval by the Attorney General. The use of the following statement is not prohibited:

“The official registration and financial information regarding (insert the legal name of the charity as registered with the Registry of Charitable Trusts) can be obtained from the Attorney General's Web site at <http://caag.state.ca.us/charities/>. Registration does not imply endorsement.”

(8) Representing directly or by implication that a charitable organization will receive an amount greater than the actual net



proceeds reasonably estimated to be retained by the charity for its use.

(9) With respect to solicitations by commercial fundraisers for charitable purposes on behalf of law enforcement personnel, firefighters, or other persons who protect the public safety, issuing, offering, giving, delivering, or distributing any honorary membership cards, courtesy cards, or similar cards, or any stickers, emblems, plates, or other items that could be used for display on a motor vehicle, and that suggest affiliation with, or endorsement by any public safety personnel or a group comprising such personnel.

(10) (A) Soliciting for advertising to appear in a for-profit publication that relates to, purports to relate to, or that could reasonably be construed to relate to, any charitable purpose without making the following disclosures at the time of solicitation:

(i) The publication is a for-profit, commercial enterprise.

(ii) The true name of the solicitor and the fact that the solicitor is a professional solicitor.

(iii) The publication is not affiliated with or sponsored by any charitable organization.

(B) Where a sale of advertising has been made, the solicitor, prior to accepting any money for the sale, shall make to the purchaser the disclosures required by subparagraph (A) in written form and in conspicuous type.

(11) Representing that any part of the contributions solicited by a charitable organization will be given or donated to any other charitable organization unless that organization has consented in writing to the use of its name prior to the solicitation. The written consent shall be signed by one authorized officer, director, or trustee of the charitable organization.

(12) Representing that tickets to events will be donated for use by another, unless all of the following requirements have been met:

(A) The charitable organization or commercial fundraiser has commitments, in writing, from charitable organizations stating that they will accept donated tickets and specifying the number of tickets they are willing to accept.

(B) The donated tickets will not, when combined with other ticket donations, exceed either of the following:



(i) The number of ticket commitments the charitable organization or commercial fundraiser has received from charitable organizations.

(ii) The total attendance capacity of the site of the event.

(g) A ticket commitment from a charitable organization alone, as described in subdivision (i), does not constitute written consent to use of the organization's name in the solicitation campaign.

SEC. 12. Section 12599.7 is added to the Government Code, to read:

12599.7. (a) A commercial fundraiser for charitable purposes shall maintain during each solicitation campaign and for not less than 10 years following the completion of each solicitation campaign records, including any electronic records, containing the following information, which shall be available for inspection upon demand by the Attorney General:

(1) The date and amount of each contribution received as a result of the solicitation campaign and, for noncash contributions, the name and mailing address of each contributor.

(2) The name and residence address of each employee, agent, or other person involved in the solicitation campaign.

(3) Records of all revenue received and expenses incurred in the course of the solicitation campaign.

(4) For each account into which the commercial fundraiser deposited revenue from the solicitation campaign, the account number and the name and location of the bank or other financial institution in which the account was maintained.

(b) If a commercial fundraiser for charitable purposes sells tickets to an event and represents that tickets will be donated for use by another, the commercial fundraiser shall maintain for not less than 10 years following the completion of the event records containing the following information, which shall be available for inspection upon demand by the Attorney General:

(1) The number of tickets purchased and donated by each contributor.

(2) The name and address of all organizations receiving donated tickets for use by others, including the number of tickets received by each organization.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or



school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Approved _____, 2004

Governor

